

Introduced by Senators Cedillo and Murray

February 17, 2006

An act to amend Section 244.5 of, and to add Chapter 4.5 (commencing with Section 12430) to Title 2 of Part 4 of, the Penal Code, relating to remote stun guns.

LEGISLATIVE COUNSEL'S DIGEST

SB 1336, as introduced, Cedillo. Remote stun guns.

Existing law makes it an offense to assault a person, or to assault a peace officer or firefighter during the performance of their duties, as specified, with a stun gun or a taser.

This bill would revise the crimes of assault with a taser upon a person or a peace officer or firefighter, as specified, by changing the penalty therefor to authorize imposition of a fine not to exceed \$1,000 in the case of assault upon a person or a fine of \$1,000 in the case of assault upon a peace officer or firefighter, or in either case by both that fine and imprisonment. The bill would recharacterize "taser" as "remote stun gun," as defined.

The bill would make other conforming changes.

This bill would provide that, excepting felons, persons addicted to narcotics, and minors, any person may purchase, possess, or transport a remote stun gun for self-defense. The bill would also provide that no person may furnish a remote stun gun to a minor. Violation of these provisions would be a misdemeanor.

By creating a new crime, this bill would impose a state-mandated local program.

The bill would require that each remote stun gun sold, transported, or possessed bear the name of the manufacturer and a serial number applied by the manufacturer. Violation of these provisions would be an offense. The bill would further provide any person who changes,

alters, removes or obliterates the name of the manufacturer, the serial number or any other mark of identification on any remote stun gun would be guilty of an offense. The bill would require registration of purchasers of remote stun guns by the manufacturer, as specified. Possession of an unregistered remote stun gun, or a remote stun gun by a person to whom it is not registered would be a misdemeanor.

By creating new crimes, this bill would impose a state-mandated local program.

The bill would require every remote stun gun sold to be accompanied by instructions at the time of sale. Violation of these provisions would be an infraction.

By creating a new crime, this bill would impose a state-mandated local program.

The bill would prohibit persons with certain criminal histories from possessing remote stun guns. The bill would provide enhanced prison sentences for persons committing certain crimes while armed with a remote stun gun.

By creating new crimes and enhancements, this bill would impose a state-mandated local program.

The bill would impose a background check requirement upon purchasers of remote stun guns.

The bill would require, contingent upon available funding, the Attorney General to include the use of a remote stun gun in the annual report to the Legislature detailing the use of firearms in crimes, as specified. The bill would also require, contingent upon funding, that the Attorney General select an independent panel to report upon in custody sudden deaths involving the use of specified restraining techniques, including remote stun guns, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 244.5 of the Penal Code is amended to read:

244.5. (a) As used in this section, “stun gun” means any item, except a ~~taser~~, *remote stun gun, as defined in Section 12430*, used or intended to be used as either an offensive or defensive weapon that is capable of temporarily immobilizing a person by the infliction of an electrical charge.

(b) Every person who commits an assault upon the person of another with a stun gun ~~or taser~~ shall be punished by imprisonment in a county jail for a term not exceeding one year, or by imprisonment in the state prison for 16 months, two, or three years.

(c) Every person who commits an assault upon the person of a peace officer or firefighter with a stun gun ~~or taser~~, who knows or reasonably should know that the person is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the county jail for a term not exceeding one year, or by imprisonment in the state prison for two, three, or four years.

(d) This section shall not be construed to preclude or in any way limit the applicability of Section 245 in any criminal prosecution.

SEC. 2. Chapter 4.5 (commencing with Section 12430) is added to Title 2 of Part 4 of the Penal Code, to read:

CHAPTER 4.5. REMOTE STUN GUNS

12430. (a) Except as provided in this section, any person may purchase, possess, or use a remote stun gun if the remote stun gun is used solely for self-defense purposes. The restriction in this subdivision shall not apply to the purchase, possession, or use of a remote stun gun by law enforcement officers, corrections officer, other government agents, and bonded professional security guards, for use in their official duties.

(b) No person convicted of a felony or any crime involving an assault under the laws of the United States, the State of California, or any other state, government, or country or

1 convicted of assault with a remote stun gun under Section 12431
2 shall purchase, possess, or use a remote stun gun.

3 (c) No person who is addicted to any narcotic drug shall
4 purchase, possess, or use a remote stun gun.

5 (d) No person shall sell or furnish any remote stun gun to a
6 minor.

7 (e) No person who is a minor shall purchase, possess, or use a
8 remote stun gun.

9 (f) Nothing in this chapter shall prohibit a person holding a
10 license as a private investigator or private patrol operator issued
11 pursuant to Chapter 11 (commencing with Section 7500) of
12 Division 3 of the Business and Professions Code, or uniformed
13 employees of a private patrol operator, from purchasing,
14 possessing, or transporting any remote stun gun if it is used
15 solely for defensive purposes in the course of the activity for
16 which the license was issued and if the person has satisfactorily
17 completed a course of instruction approved by the Department of
18 Consumer Affairs in the use of a remote stun gun.

19 (g) As used in this chapter, the term “remote stun gun” means
20 a stun gun that delivers an electrical charge to a remote target
21 through one or more wire-tethered projectiles. The term “remote
22 stun gun cartridge” means a replaceable module containing the
23 projectiles, or conductive wires, or both.

24 (h) A violation of this section is punishable as a misdemeanor.
25 12431. Any person who commits an assault upon the person
26 of another with a remote stun gun is guilty of a public offense
27 and is punishable by imprisonment in a county jail not to exceed
28 one year, or in a state prison for 16 months, or two or three years,
29 or by a fine not to exceed one thousand dollars (\$1,000), or by
30 both the fine and imprisonment, except that, if the assault is
31 against a peace officer, as defined in Chapter 4.5 (commencing
32 with Section 830) of Title 3 of Part 2, or a firefighter, engaged in
33 the performance of their official duties and the person
34 committing the offense knows or reasonably should know that
35 the victim is a peace officer or firefighter, the offense is
36 punishable by imprisonment in a state prison for two, three, or
37 four years, or by a fine of one thousand dollars (\$1,000), or by
38 both the fine and imprisonment.

39 12432. (a) (1) Each remote stun gun sold, transported or
40 possessed under the authority of this chapter shall bear the name

1 of the manufacturer and a serial number applied by the
2 manufacturer.

3 (2) Each remote stun gun shall incorporate an identification
4 and tracking system which, upon deployment of remote
5 electrodes, shall allow law enforcement to identify and track the
6 specific device used without requiring its recovery.

7 (3) Each purchaser of a remote stun gun or remote stun gun
8 cartridge shall register his or her identity as a purchaser with the
9 manufacturer of the remote stun gun or cartridge. The
10 identification of the purchaser shall be verified by the seller with
11 a government-issued identification, or by verifying the social
12 security number and address of the purchaser.

13 (4) Each remote stun gun cartridge sold to private citizens for
14 the purpose of self-defense shall have a maximum range of less
15 than 17 feet. The range limitation shall not apply to remote stun
16 guns used by any law enforcement or other governmental
17 agency, or to private investigators, private patrol operators, or
18 uniformed employees of private patrol operators, as described in
19 subdivision (f) of Section 12430.

20 (5) Any person, firm, or corporation who within this state
21 knowingly sells or offers for sale, possesses, or transports any
22 remote stun gun in violation of this section is guilty of a public
23 offense and upon conviction thereof shall be punishable by
24 imprisonment in the county jail for not exceeding one year or by
25 a fine not to exceed two thousand dollars (\$2,000), or by both.

26 (b) Any person who changes, alters, removes or obliterates the
27 name of the manufacturer, the serial number or any other mark of
28 identification on any remote stun gun is guilty of a misdemeanor.

29 (c) (1) Any manufacturer that sells a remote stun gun in the
30 State of California shall maintain a database including the
31 identity of all end user purchasers of its remote stun guns and
32 remote stun gun cartridges compiled from information supplied
33 to the manufacturer by sellers of those devices. The database
34 shall include, at a minimum, the name and sufficient information
35 to accurately identify the purchaser, such as a driver's license or
36 social security number. It is the responsibility of the
37 manufacturer to provide registration forms or online tools for
38 retail dealers to complete the registration process.

39 (2) Registration information regarding the purchasers of
40 remote stun guns shall be treated by the manufacturer as

1 confidential. The information shall not be sold or distributed, and
2 shall be disclosed only as provided in this section. Violation of
3 this paragraph is a misdemeanor punishable by a fine not to
4 exceed ten thousand dollars (\$10,000).

5 (3) Registration information for any remote stun gun, or
6 serialized component thereof, may be requested from the
7 manufacturer in writing by any law enforcement agency
8 investigating the origin of a remote stun gun for purposes of a
9 criminal investigation. Manufacturers shall supply this
10 information to law enforcement upon written request.

11 (4) The manufacturer shall maintain registration records for
12 not less than eight years.

13 (d) Possession of an unregistered remote stun gun, except for
14 inventory for sale or transport, or possession of a remote stun gun
15 by a person who is not the registered owner of the remote stun
16 gun, is a misdemeanor.

17 12433. (a) Every remote stun gun that may be lawfully
18 purchased pursuant to this chapter shall be accompanied at the
19 time of purchase by printed instructions for use.

20 (b) Violation of this section is an infraction punishable by a
21 fine of one hundred dollars (\$100).

22 12434. (a) (1) Any person who has been convicted of a
23 felony under the laws of the United States, of the State of
24 California, or any other state, government, or country, or of an
25 offense enumerated in subdivision (a), (b), or (d) of Section
26 12001.6, or is addicted to the use of any narcotic drug, and who
27 owns, purchases, receives, or has in his or her possession or
28 under his or her custody or control any remote stun gun is guilty
29 of a misdemeanor.

30 (2) Any person who has two or more convictions for violating
31 paragraph (2) of subdivision (a) of Section 417 and who owns,
32 purchases, receives, or has in his or her possession or under his
33 or her custody or control any remote stun gun is guilty of a
34 misdemeanor.

35 (b) Notwithstanding subdivision (a), any person who has been
36 convicted of a felony or of an offense enumerated in Section
37 12001.6, when that conviction results from certification by the
38 juvenile court for prosecution as an adult in an adult court under
39 Section 707 of the Welfare and Institutions Code, and who owns

1 or has in his or her possession or under his or her custody or
2 control any remote stun gun is guilty of a misdemeanor.

3 (c) Except as provided in subdivision (a), any person who has
4 been convicted of a misdemeanor violation of Section 71, 76,
5 136.1, 136.5, or 140, subdivision (d) of Section 148, Section
6 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5,
7 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9,
8 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034,
9 Section 12040, subdivision (b) of Section 12072, subdivision (a)
10 of former Section 12100, Section 12220, 12320, or 12590 of this
11 code or Section 8100, 8101, or 8103 of the Welfare and
12 Institutions Code, any firearm-related offense pursuant to
13 Sections 871.5 and 1001.5 of the Welfare and Institutions Code,
14 or of the conduct punished in paragraph (3) of subdivision (a) of
15 Section 12072 of this code, and who, within 10 years of the
16 conviction, owns, purchases, receives, or has in his or her
17 possession or under his or her custody or control, any remote
18 stun gun is guilty of a public offense, which shall be punishable
19 by imprisonment in a county jail not exceeding one year, by a
20 fine not exceeding one thousand dollars (\$1,000), or by both that
21 fine and imprisonment. The court, on forms prescribed by the
22 Department of Justice, shall notify the department of persons
23 subject to this subdivision. However, the prohibition in this
24 paragraph may be reduced, eliminated, or conditioned as
25 provided in paragraph (2) or (3).

26 (d) Any person who, as an express condition of probation, is
27 prohibited or restricted from owning, possessing, controlling,
28 receiving, or purchasing a remote stun gun and who owns,
29 purchases, receives, or has in his or her possession or under his
30 or her custody or control, any remote stun gun but who is not
31 subject to subdivision (a) or (c) is guilty of a public offense,
32 which shall be punishable by imprisonment in a county jail not
33 exceeding one year, by a fine not exceeding one thousand dollars
34 (\$1,000), or by both that fine and imprisonment. The court, on
35 forms provided by the Department of Justice, shall notify the
36 department of persons subject to this subdivision. The notice
37 shall include a copy of the order of probation and a copy of any
38 minute order or abstract reflecting the order and conditions of
39 probation.

(e) For any person who is subject to this section, the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, purchasing, receiving, possessing or having under his or her custody or control, any remote stun gun. The notice shall inform the defendant of the prohibition regarding remote stun guns and include a form to facilitate the transfer of remote stun guns. Failure to provide the notice shall not be a defense to a violation of this section.

(f) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073 of this code, any offense enumerated in subdivision (c) of this section, or any offense described in subdivision (a) of Section 12025, subdivision (a) of Section 12031, or subdivision (a) of Section 12034 of this code, and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073 of this code, or any offense enumerated in subdivision (c) of this section shall not own, or have in his or her possession or under his or her custody or control, any remote stun gun until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a remote stun gun.

(g) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

1 (2) The defendant was sentenced to a federal correctional
2 facility for more than 30 days, or received a fine of more than
3 one thousand dollars (\$1,000), or received both punishments.

4 (h) (1) A violation of this section is justifiable where all of the
5 following conditions are met:

6 (A) The person found the remote stun gun or took the remote
7 stun gun from a person who was committing a crime against him
8 or her.

9 (B) The person possessed the remote stun gun no longer than
10 was necessary to deliver or transport the remote stun gun to a law
11 enforcement agency for that agency's disposition according to
12 law.

13 (C) If the remote stun gun is being transported to a law
14 enforcement agency, the person transporting the remote stun gun
15 has given prior notice to the law enforcement agency that he or
16 she is transporting the remote stun gun to the law enforcement
17 agency for disposition according to law.

18 (2) Upon the trial for violating this section, the trier of fact
19 shall determine whether the defendant was acting within the
20 provisions of the exemption created by this subdivision.

21 (3) The defendant has the burden of proving by a
22 preponderance of the evidence that he or she comes within the
23 provisions of the exemption created by this subdivision.

24 12435. (a) Except as provided in subdivisions (c) and (d),
25 any person who is armed with a remote stun gun in the
26 commission of a felony or attempted felony shall be punished by
27 an additional and consecutive term of imprisonment in the state
28 prison for one year, unless the arming is an element of that
29 offense. This additional term shall apply to any person who is a
30 principal in the commission of a felony or attempted felony if
31 one or more of the principals is armed with a remote stun gun,
32 whether or not the person is personally armed with a remote stun
33 gun.

34 (b) Notwithstanding the enhancement set forth in subdivision
35 (a), any person who is personally armed with a remote stun gun
36 in the commission of a violation or attempted violation of
37 Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378,
38 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety
39 Code, shall be punished by an additional and consecutive term of
40 imprisonment in the state prison for three, four, or five years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is not personally armed with a remote stun gun who, knowing that another principal is personally armed with a remote stun gun, is a principal in the commission of an offense or attempted offense specified in subdivision (b), shall be punished by an additional and consecutive term of imprisonment in the state prison for one, two, or three years.

(d) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(e) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (b) or (c) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

12436. Any person who, during the commission or attempted commission of a felony, furnishes or offers to furnish a remote stun gun to another for the purpose of aiding, abetting, or enabling that person or any other person to commit a felony shall, in addition and consecutive to the punishment prescribed by the felony or attempted felony of which the person has been convicted, be punished by an additional term of one, two, or three years in the state prison. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence. The additional term provided in this section shall not be imposed unless the fact of the furnishing is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

12437. (a) A person commits criminal possession of a remote stun gun when he or she carries a remote stun gun in a public place or on any public street while masked so as to hide his or her identity.

(b) Criminal possession of a remote stun gun is punishable by imprisonment in a county jail not to exceed one year.

(c) Subdivision (a) shall not apply to the following:

(1) A peace officer who is in the performance of his or her duties.

1 (2) Full-time paid peace officers of other states and the federal
2 government who are carrying out official duties while in this
3 state.

4 (3) Any person summoned by any of the officers enumerated
5 in paragraph (1) or (2) to assist in making arrests or preserving
6 the peace while he or she is actually engaged in assisting that
7 officer.

8 12438. (a) This section applies to the following felonies:

9 (1) Section 187 (murder).

10 (2) Section 203 or 205 (mayhem).

11 (3) Section 207, 209, or 209.5 (kidnapping).

12 (4) Section 211 (robbery).

13 (5) Section 215 (carjacking).

14 (6) Section 220 (assault with intent to commit a specified
15 felony).

16 (7) Subdivision (d) of Section 245 (assault with a firearm on a
17 peace officer or firefighter).

18 (8) Section 261 or 262 (rape).

19 (9) Section 264.1 (rape or sexual penetration in concert).

20 (10) Section 286 (sodomy).

21 (11) Section 288 or 288.5 (lewd act on a child).

22 (12) Section 288a (oral copulation).

23 (13) Section 289 (sexual penetration).

24 (14) Section 4500 (assault by a life prisoner).

25 (15) Section 4501 (assault by a prisoner).

26 (16) Section 4503 (holding a hostage by a prisoner).

27 (17) Any felony punishable by death or imprisonment in the
28 state prison for life.

29 (18) Any attempt to commit a crime listed in this subdivision
30 other than an assault.

31 (b) Notwithstanding any other provision of law, any person
32 who, in the commission of a felony specified in subdivision (a),
33 personally uses a remote stun gun, shall be punished by an
34 additional and consecutive term of imprisonment in the state
35 prison for 10 years. The remote stun gun need not be operable or
36 loaded for this enhancement to apply.

37 (c) Notwithstanding any other provision of law, any person
38 who, in the commission of a felony specified in subdivision (a),
39 personally and intentionally discharges a remote stun gun, shall

1 be punished by an additional and consecutive term of
2 imprisonment in the state prison for 20 years.

3 (d) Notwithstanding any other provision of law, any person
4 who, in the commission of a felony specified in subdivision (a),
5 Section 246, or subdivision (c) or (d) of Section 12034,
6 personally and intentionally discharges a remote stun gun and
7 proximately causes great bodily injury, as defined in Section
8 12022.7, or death, to any person other than an accomplice, shall
9 be punished by an additional and consecutive term of
10 imprisonment in the state prison for 25 years to life.

11 (e) (1) The enhancements provided in this section shall apply
12 to any person who is a principal in the commission of an offense
13 if both of the following are pled and proved:

14 (A) The person violated subdivision (b) of Section 186.22.

15 (B) Any principal in the offense committed any act specified
16 in subdivision (b), (c), or (d).

17 (2) An enhancement for participation in a criminal street gang
18 pursuant to Chapter 11 (commencing with Section 186.20) of
19 Title 7 of Part 1 shall not be imposed on a person in addition to
20 an enhancement imposed pursuant to this section, unless the
21 person personally used or personally discharged a remote stun
22 gun in the commission of the offense.

23 (f) Only one additional term of imprisonment under this
24 section shall be imposed per person for each crime. If more than
25 one enhancement per person is found true under this section, the
26 court shall impose upon that person the enhancement that
27 provides the longest term of imprisonment. An enhancement
28 involving a remote stun gun specified in Section 12022 or
29 12022.4 shall not be imposed on a person in addition to an
30 enhancement imposed pursuant to this section. An enhancement
31 for great bodily injury as defined in Section 12022.7, 12022.8, or
32 12022.9 shall not be imposed on a person in addition to an
33 enhancement imposed pursuant to subdivision (d).

34 (g) Notwithstanding any other provision of law, probation
35 shall not be granted to, nor shall the execution or imposition of
36 sentence be suspended for, any person found to come within the
37 provisions of this section.

38 (h) Notwithstanding Section 1385 or any other provision of
39 law, the court shall not strike an allegation under this section or a
40 finding bringing a person within the provisions of this section.

1 (i) The total amount of credits awarded pursuant to Article 2.5
2 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
3 3 or pursuant to Section 4019 or any other provision of law shall
4 not exceed 15 percent of the total term of imprisonment imposed
5 on a defendant upon whom a sentence is imposed pursuant to this
6 section.

7 (j) For the penalties in this section to apply, the existence of
8 any fact required under subdivision (b), (c), or (d) shall be
9 alleged in the information or indictment and either admitted by
10 the defendant in open court or found to be true by the trier of
11 fact. When an enhancement specified in this section has been
12 admitted or found to be true, the court shall impose punishment
13 pursuant to this section rather than imposing punishment
14 authorized under any other provision of law, unless another
15 provision of law provides for a greater penalty or a longer term
16 of imprisonment.

17 (k) When a person is found to have used or discharged a
18 remote stun gun in the commission of an offense that includes an
19 allegation pursuant to this section and the remote stun gun is
20 owned by that person, a coparticipant, or a coconspirator, the
21 court shall order that the remote stun gun be deemed a nuisance
22 and disposed of.

23 (l) The enhancements specified in this section shall not apply
24 to the lawful use or discharge of a remote stun gun by a public
25 officer, as provided in Section 196, or by any person in lawful
26 self-defense, lawful defense of another, or lawful defense of
27 property, as provided in Sections 197, 198, and 198.5.

28 12439. No remote stun gun may be delivered without the
29 purchaser being subject to a background check to ensure that the
30 person is not disqualified from possessing a remote stun gun.

31 12440. (a) Contingent upon available funding, the Attorney
32 General shall include the use of a remote stun gun in the annual
33 report to the Legislature pursuant to Section 12039.

34 (b) Contingent upon available funding, the Attorney General
35 shall select an independent panel of medical and policy experts to
36 produce a report to the Legislature on sudden deaths for persons
37 under arrest or otherwise in custody where restraints or other
38 officer safety tools were used, including, but not limited to, the
39 use of OC spray, CNS gas, remote stun gun, stun shield, baton,
40 and hogtying.

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the
6 penalty for a crime or infraction, within the meaning of Section
7 17556 of the Government Code, or changes the definition of a
8 crime within the meaning of Section 6 of Article XIII B of the
9 California Constitution.

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